

REMARKS

Claim Status

Claims 37-45 and 47-53 are pending in the present application. No additional claims fee is believed to be due.

Claims 46 and 54 are canceled without prejudice.

Claim 37 has been amended to more clearly define the absorbent article in accordance with the teachings of the specification, for example, at page 9.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102(b) Over Morman

Claims 37, 38, 40-43 and 47-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Morman (U.S. Patent No. 5,910,224).

The Office asserts the following with respect to the disclosure of Morman: With respect to claim 37, Morman discloses an absorbent article, the absorbent article comprising an elastic component, the elastic component comprising a first substrate in the form of a neckable material 12 having an elastomeric composition in the form of elastic layer 27 of elastomeric precursor material 26 applied directly via a printing methods in a predetermined geometric pattern of rectilinear strips. With respect to claim 38, Morman discloses that the elastic component, i.e., the substrate 12 with elastic layer 27 thereon, forms a reversibly necked material taught by reference to U.S. Patent No. 4,965,122 to Morman. With respect to claim 40, Morman discloses that the predetermined geometric pattern is an intermittent pattern. With respect to claim 41, the elastomeric members disclosed by Morman having a width dimension of 0.95 cm, or 9.5 mm, which falls within the claimed range of at least about 2.0 mm. With respect to claim 42, the elastomeric members as disclosed by Morman and applied in the precursor composition form having a thickness dimension of 0.1-100 mils, or 0.003-2.5 mm, which overlaps the claimed range of at least about 0.1 mm. With respect to claim 43, the elastomeric

members disclosed by Morman are in a repeating intermittent pattern, i.e., spaced apart from one another. With respect to claim 47, the substrate disclosed by Morman is an SMS laminate, i.e., a nonwoven fibrous web. With respect to claim 48, the fibers disclosed by Morman comprise a polyolefin material, namely polypropylene, taught by reference to the '122 patent. With respect to claim 49, the elastic component disclosed by Morman has been necked, i.e., incrementally stretched. With respect to claim 50, the elastic component disclosed by Morman further comprises a second substrate, i.e., a second layer, joined to the first substrate to form a laminate, wherein the elastomeric composition is disposed between the first and second substrates. With respect to claim 51, Morman discloses that the second substrate is an elastic sheet wherein Morman discloses that the term "sheet" means a film. With respect to claim 52, the printing method disclosed by Morman is gravure.

However, as will be set forth in detail below, it is believed that the absorbent article defined by claim 37 is not anticipated by Morman. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

In particular, Morman's disclosure relates to a method of forming a stretchable composite comprising: applying an elastomeric precursor to a first neckable material; then treating said elastomeric precursor to form an elastomeric layer wherein said elastomeric layer bonds to said necked material and wherein said neckable material recovers after being stretched in the necked position. (See Morman, col. 12, ll. 1-4). Morman defines the "elastomeric precursor" as a material that is not elastic as applied but may be treated to produce an elastic layer by undergoing polymerization, curing, cross-linking, coalescing, drying or evaporation of a solvent. (See Morman, col. 4, ll. 62-67). Further, Morman discloses a list of elastomeric precursors at col. 12, lines 1-31.

Irrespective of these teachings, however, Morman fails to disclose the absorbent article defined by claim 37. That is, Morman does not teach or disclose an absorbent article that includes that phase change solvent as defined by claim 37 and having the general formula:

$$(I) R' - L_Y - (Q - L_X)_{n-1} - Q - L_Y - R ;$$

$$(II) R' - L_Y - (Q - L_X)_n - R ;$$

$$(III) R' - (Q - L_X)_n - R ;$$

(IV) $R' - (Q - L_x)_{n-1} - Q - L_y - R$;

(V) $R' - (Q - L_x)_{n-1} - Q - R$; or

a mixture thereof;

wherein Q may be a substituted or unsubstituted difunctional aromatic moiety; L is CH_2 ; R and R' are the same or different and are independently selected from H, CH_3 , COOH, $CONHR_1$, $CONR_1R_2$, NHR_3 , NR_3R_4 , hydroxy, or C1-C30 alkoxy; wherein R_1 , R_2 , R_3 and R_4 are the same or different and are independently selected from H or linear or branched alkyl from C1-C30; x is an integer from 1 to 30; y is an integer from 1 to 30; and n is an integer from 1 to 7.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. Verdegaeal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Further, because the hallmark of anticipation is prior invention, the prior art reference—in order to anticipate under 35 U.S.C. 102 – must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements "arranged as in the claim." Net MoneyIN, Inc. v. VeriSign, inc. et al., (CAFC 2007-1565) citing Connell v Sears, Roebuck & Co., 722 F.2d 1542, 1548 (Fed. Cir. 1983). The "arranged as in the claim" requirement applies to all claims and refers to the need for an anticipatory reference to show all of the limitations of the claims arranged or combined in the same way as recited in the claims, not merely in a particular order. Net MoneyIN, Inc. v. VeriSign, Inc. et al., (CAFC 2007-1565) at pages 15-16.

Because Morman fails to disclose: i) all of the limitations of Claim 37; and ii) all of the limitations arranged or combined in the same way as recited in Claim 37, Morman cannot be said to prove prior invention of the absorbent article of Claim 37 and, thus cannot anticipate under 35 U.S.C. §102. Further, because Claims 38, 40-43 and 47-52 depend directly or indirectly from claim 37, they too are not anticipated by Morman and therefore, are in condition for allowance.

Rejection Under 35 USC §103(a) Over Morman in view of Vukos

Claims 39, 44 and 45 have been rejected under 35 USC §103(a) as being unpatentable over Morman in view of Vukos, et al. *WO 02/34182 A2).

Applicants' independent Claim 37 recites an absorbent article comprising, *inter alia*, a phase change solvent having the general formula:

- (I) $R' - L_y - (Q - L_x)_{n-1} - Q - L_y - R$;
 - (II) $R' - L_y - (Q - L_x)_n - R$;
 - (III) $R' - (Q - L_x)_n - R$;
 - (IV) $R' - (Q - L_x)_{n-1} - Q - L_y - R$;
 - (V) $R' - (Q - L_x)_{n-1} - Q - R$; or
- a mixture thereof;

wherein Q may be a substituted or unsubstituted difunctional aromatic moiety; L is CH₂; R and R' are the same or different and are independently selected from H, CH₃, COOH, CONHR₁, CONR₁R₂, NHR₃, NR₃R₄, hydroxy, or C1-C30 alkoxy; wherein R₁, R₂, R₃ and R₄ are the same or different and are independently selected from H or linear or branched alkyl from C1-C30; x is an integer from 1 to 30; y is an integer from 1 to 30; and n is an integer from 1 to 7.

In order for the Office to show a *prima facie* conclusion of obviousness, M.P.E.P. §2142 requires a clear articulation of the reasons why the claimed invention would have been obvious. Specifically, the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 500 U.S. 398, 82 USPQ2d 1385, 1396 (2007) noted that the burden lies initially with the Office to provide an explicit analysis supporting a rejection under 35 U.S.C. 103. "[R]ejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." The Court in *KSR International* further identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham v. John Deere Co.* 383 U.S. 1, 148 USPQ 459 (1966).

Specifically, as previously required by the TSM (teaching, suggestion, motivation) approach to obviousness, one exemplary rationale indicated requires teaching, suggestion, or motivation in the prior art reference that would have led one of ordinary skill to modify the prior art reference to arrive at the claimed invention. Specifically, to reject a claim based on this rationale, the Office must articulate the following: (1) a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings to arrive at each and every limitation of the claimed invention; (2) a finding that there was a reasonable expectation of success; and (3) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness. The Office has failed to meet its burden under number (1) above, as the cited reference fails to show each and every limitation of Applicants' invention and there is no apparent reason for one skilled in the art to modify the reference to arrive at each and every limitation. It simply would not have been obvious to one skilled in the art to arrive at Applicants' claimed combinations.

As discussed above with respect to the rejection of claim 37, Mormon does not teach or suggest the phase change solvent required by claim 37. Since the teaching of Mormon does not satisfy all of the requirements of Claim 37, Applicants contend that there can be no effective teaching via inherency or suggestion of their invention by this reference.

Furthermore, Vukos does not remedy or make up for this failure of Mormon. Although Vukos teaches an absorbent garment with transverse and longitudinal stretch, it still provides no teaching or suggestion of an absorbent article that comprises a phase change solvent having the formula recited in claim 37.

References relied upon to support a rejection under 35 U.S.C. 103(a) must provide an enabling disclosure, i.e., they must place the claimed invention in the possession of the public. *In re Payne*, 203 U.S.P.Q. 245 (CCPA 1979). Because the cited combination fails to teach all of the claim limitations of Claim 37, the Office has not established a *prima facie* case of obviousness against this claim and has not placed the presently

claimed absorbent article in the possession of the public. Since claims 39, 44 and 45 depend from claim 37, the cited combination also fails to teach all of their claim limitations. Therefore, Applicants assert that claims 39, 44 and 45 are nonobvious over the cited combination and are in condition for allowance.

Rejection under 35 U.S.C. § 102/103 over Mormon

Claim 53 stands rejected under 35 U.S.C. 102(b) as anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Mormon. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (*See* MPEP §2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). Additionally, it is well settled that in order to establish a prima facie case of obviousness, three basic requirements must be met. (*See* MPEP § 2143). First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* There is at least one aspect of the inventions defined by independent Claim 37 not taught or suggested by Mormon.

As discussed above, Mormon fails to disclose the absorbent article defined by claim 37. That is, Mormon does not teach or disclose an absorbent article that includes that phase change solvent as defined by claim 37 and having the general formula:

- (I) $R' - L_Y - (Q - L_X)_{n-1} - Q - L_Y - R$;
 - (II) $R' - L_Y - (Q - L_X)_n - R$;
 - (III) $R' - (Q - L_X)_n - R$;
 - (IV) $R' - (Q - L_X)_{n-1} - Q - L_Y - R$;
 - (V) $R' - (Q - L_X)_{n-1} - Q - R$; or
- a mixture thereof;

wherein Q may be a substituted or unsubstituted difunctional aromatic moiety; L is CH₂; R and R' are the same or different and are independently selected from H, CH₃, COOH, CONHR₁, CONR₁R₂, NHR₃, NR₃R₄, hydroxy, or C1-C30 alkoxy; wherein R₁, R₂, R₃ and R₄ are the same or different and are independently selected from H or linear or branched alkyl from C1-C30; x is an integer from 1 to 30; y is an integer from 1 to 30; and n is an integer from 1 to 7.

Thus, it is respectfully submitted that, for at least the reasons discussed above, the Office has not established anticipation or obviousness of the absorbent article of claim 37. As a result, Applicants respectfully request that the Office withdraw the 102/103 rejection for dependent claim 53.

Conclusion

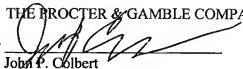
In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 USC §102 and §103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 37-45 and 47-53 is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By


John P. Colbert
Registration No. 45,765
(513) 983-6678

Date: August 6, 2009
Customer No. 27752